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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,429	11/13/2001	Arturo A. Rodriguez	A-7482	3268

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EXAMINER

LAYE, JADE O

ART UNIT PAPER NUMBER

2623

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/008,429	RODRIGUEZ, ARTURO A.	
	Examiner	Art Unit	
	Jade O. Laye	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/29/02 & 7/21/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

I. The information disclosure statements (IDS) submitted on 1/29/02 and 7/21/03 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered each.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

II. Claims 1-4, 9, 24, 26, 30, 31, 34, 37-40, 45, 60, 62, 66, 67, 70, 73, 74, and 76-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis et al. (US Pat. Pub. No. 2002/0042913).

As to Claim 1, Ellis et al disclose a video distribution system comprising a remote server, which allows a user to select various media for download and viewing. In addition, the system is capable of tracking the availability of said media in real-time and alerting the user to any changes. (Abstract; Fig. 1, 12, & 13; Par. [0011, 0057, & 0058]). Accordingly, Ellis et al anticipate each and every limitation of Claim 1.

Claims 2, 3, 37, 38, 39, 73, and 74 correspond to or are encompassed by Claim 1. Thus, each is analyzed and rejected as previously discussed.

As to Claim 4, Ellis further teaches the system can allow a user to retain unavailable media on his or her media list. (citations of Claim 1). The Examiner interprets this as implying the system will, in general, omit any download option that is unavailable. Moreover, the unavailability of media due to bandwidth constraints is inherent in any VOD-like system (such as the system of Ellis). Accordingly, Ellis et al anticipate each and every limitation of Claim 4.

Claim 40 corresponds to Claim 4. Thus, it is analyzed and rejected as previously discussed.

As to Claim 9, Ellis further teaches the system does not check the media's availability until after the user requests said media. (citations of Claim 1). Accordingly, Ellis et al anticipate each and every limitation of Claim 9.

Claim 45 corresponds to Claim 9. Thus, it is analyzed and rejected as previously discussed.

As to Claim 24, it is inherent in Ellis's system (i.e., pay-per-view) that some form of data structure contain the recited limitations. Accordingly, Ellis et al anticipate each and every limitation of Claim 24.

Claim 60 corresponds to Claim 24. Thus, it is analyzed and rejected as previously discussed.

As to Claim 26, Ellis further teaches that after the system determines a user selection is unavailable, the system will allow a user to download the same program at a later time (i.e., once

it becomes available user is alerted and given opportunity to download). (Citations of Claim 1). Accordingly, Ellis et al anticipate each and every limitation of Claim 26.

Claim 62 corresponds to Claim 26. Thus, it is analyzed and rejected as previously discussed.

As to Claim 30, Ellis further teaches the user is allowed to decide if he or she wants to be notified when a program becomes available (i.e., put on “stand-by”). (Fig. 12). Accordingly, Ellis et al anticipate each and every limitation of Claim 30.

Claim 66 corresponds to Claim 30. Thus, it is analyzed and rejected as previously discussed.

As to Claim 31, Ellis further discloses that a user is allowed to select an alternate program if his or her initially selected program is unavailable. (Fig. 12). For example, since *Raiders of the Lost Art* is unavailable, the user is allowed to select the *Color Purple* or *Saving Private Ryan*. Accordingly, Ellis et al anticipate each and every limitation of Claim 31.

Claim 67 corresponds to Claim 31. Thus, it is analyzed and rejected as previously discussed.

The limitations of Claim 34 are encompassed within those of Claim 1. By keeping track of the programs available on the server, Ellis’s system will continuously update the download options (i.e., programs). Accordingly, Ellis et al anticipate each and every limitation of Claim 34.

Claim 70 corresponds to Claim 34. Thus, it is analyzed and rejected as previously discussed.

The limitations of Claim 76 are combinations of limitations from Claims 1, 4, and 31. Accordingly, Ellis et al anticipate each and every limitation of Claim 76.

Claim 78 corresponds to Claim 76. Thus, it is analyzed and rejected as previously discussed.

As to Claim 77, Ellis further teaches the system can update itself (i.e., determine when a program becomes available) over time. (citations of Claim 1). Accordingly, Ellis et al anticipate each and every limitation of Claim 77.

Claim 79 corresponds to Claim 77. Thus, it is analyzed and rejected as previously discussed.

II. Claims 1-3, 5-7, 10-18, 25, 28, 29, 37-39, 41-43, 46-54, 61, 64, 65, 80, and 81 are rejected under 35 U.S.C. 102(e) as being anticipated by Rodriguez et al. (US Pat. Pub. No. 2005/0071882).

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

As to Claim 1, Rodriguez et al disclose a system which allows a user to select various media and informs the user of various bandwidth allocation issues. (Abstract; Par. [0057-0059 & 0072]). Accordingly, Rodriguez et al anticipate each and every limitation of Claim 1.

Claims 2, 3, 37, 38, 39, 73, and 74 correspond to or are encompassed by Claim 1. Thus, each is analyzed and rejected as previously discussed.

As to Claims 5 and 6, Rodriguez further discloses a system which allocates network bandwidth in real time. (Par. 0047, 0059, 0060)]. Thus, at any given time, “download options” may be adjusted due to less than or more than expected network traffic (which could result from various user cancellation of media). Accordingly, Rodriguez et al anticipate each and every limitation of Claims 5 and 6.

Claims 41 and 42 correspond to Claims 5 and 6, respectively. Accordingly, each is analyzed and rejected as previously discussed.

As to Claim 7, Rodriguez further teaches the media can be available at a plurality of start times. (Par. [0058]). Accordingly, Rodriguez et al anticipate each and every limitation of Claim 7.

Claim 43 corresponds to Claim 7. Thus, it is analyzed and rejected as previously discussed.

As to Claim 10, Rodriguez further teaches that media pricing can be dependent upon network traffic (i.e., inherent pricing is updated). (Par. [0036 & 0063]). Accordingly, Rodriguez et al anticipate each and every limitation of Claim 10.

Claim 46 corresponds to Claim 10. Thus, it is analyzed and rejected as previously discussed.

As to Claim 11, Rodriguez further teaches the user can specify various download options which define said download. (Par. [0058]). Accordingly, Rodriguez et al anticipate each and every limitation of Claim 11.

Claim 47 corresponds to Claim 11. Thus, it is analyzed and rejected as previously discussed.

As to Claims 12-14, Rodriguez discloses all elements in Figure 2. Accordingly, Rodriguez et al anticipate each and every limitation of Claims 12-14.

Claims 48-50 correspond to Claims 12-14, respectively. Thus, each is analyzed and rejected as previously discussed.

The limitations of Claim 15 are encompassed by those of Claim 7. Thus, it is analyzed and rejected as discussed therein.

Claim 51 corresponds to Claim 15. Thus, it is analyzed and rejected as previously discussed.

As to Claims 16 and 17, Rodriguez further discloses the user of a VOD server (which also encompasses a broadcast file server). (Par. [0013]). Accordingly, Rodriguez et al anticipate each and every limitation of Claims 16 and 17.

Claims 52 and 53 correspond to Claims 16 and 17, respectively. Thus, each is analyzed and rejected as previously discussed.

As to Claim 18, Rodriguez further discloses that download resources can be bandwidth availability. (citations of Claim 1). Accordingly, Rodriguez et al anticipate each and every limitation of Claim 18.

Claim 54 corresponds to Claim 18. Thus, it is analyzed and rejected as previously discussed.

As to Claim 25, Rodriguez further teaches providing the user notice upon resource unavailability and enabling the user to request the media at different times. (Par. [0064 &

0072])). “Different times” encompasses times which are earlier in time than the initially selected time period. Accordingly, Rodriguez et al anticipate each and every limitation of Claim 25.

Claim 61 corresponds to Claim 25. Thus, it is analyzed and rejected as previously discussed.

As to Claim 28, Rodriguez further teaches that if a program is unavailable, the user may be asked to view the program at the same time, but with limited interactive functionality (i.e., different quality level). (Par. [0072])). Accordingly, Rodriguez et al anticipate each and every limitation of Claim 28.

Claim 64 corresponds to Claim 28. Thus, it is analyzed and rejected as previously discussed.

The limitations of Claim 29 are encompassed within the rejections of Claims 25 and 28.

Claim 65 corresponds to Claim 29. Thus, it is analyzed and rejected as previously discussed.

The limitations of Claims 80 and 81 are all encompassed within the disclosure of Rodriguez (as discussed under rejections of Claims 1, 11, 18, 25, and 28). More specifically, Rodriguez discloses a system capable of allocating bandwidth as it becomes available (i.e., because of less than scheduled use of resources, greater than scheduled use of resources, etc.), allows a user to request unavailable media at differing times (i.e., earlier/later/different duration), allows the user to wait until others request the programming (i.e., put on stand-by) in order to receive said programming (Par. [0072])), and provides a variable price structure (i.e., encompasses paying premium for receiving media immediately). (Par. [0036, 0053, 0063, 0079])). Moreover, it is inherent a user could choose a different program if another is unavailable

(i.e., download another program in place of content initially selected). Accordingly, Rodriguez et al anticipate each and every limitation of Claims 80 and 81.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

III. Claims 8, 19-23, 44, 55-59, and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al.

As to Claim 8, Ellis fails to disclose when the updating occurs. However, the Examiner takes Official Notice that, at the time of Applicant's invention, periodic updating of network schedules was well known in this art. Accordingly, it would have been obvious to one having

ordinary skill in this art at the time of Applicant's invention to modify the system of Ellis in order to provide a more efficient delivery method.

Claim 44 corresponds to Claim 8. Thus, it is analyzed and rejected as previously discussed.

As to Claim 19, Ellis fails to specifically teach whether the system will alert the user when the media download is complete. However, the Examiner takes Official Notice that, at the time of Applicant's invention, alerting the user when a media download is complete was notoriously well known in this art. (as evidenced by Haddad US Pat. No. 5,555,441, Col. 9, Ln. 24-36). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to modify the system of Ellis in order to provide a more user friendly download process.

Claim 55 corresponds to Claim 19. Thus, it is analyzed and rejected as previously discussed.

As to Claims 20-23, Ellis fails to specifically teach the limitations. However, the Examiner takes Official Notice that, at the time of Applicant's invention, various methods of alerting users to system processes was notoriously well known in this art. Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to modify the system of Ellis to provide any number of alerting mechanisms, thereby allowing a more user friendly download process.

Claims 56-59 correspond to Claims 20-23, respectively. Thus, each is analyzed and rejected as previously discussed.

As to Claim 75, the Examiner takes Official Notice that, at the time of Applicant's invention, providing certain processes, logic, and memory at a client device was an obvious design choice notoriously well known to those ordinarily skilled in this art. Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to modify the system of Ellis to provide for a cheaper distribution server.

IV. Claim 27, 32, 33, 63, 68, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al in view of Haddad. (US Pat. No. 5,555,441).

As to Claim 27, Ellis fails to teach whether the user can select a different duration than that initially selected (the remainder of the limitations were discussed under the rejection of Claim 26 above). However, within the same field of endeavor, Haddad discloses a similar system which allows a user to specify a variety of download durations. (Col. 2, Ln. 45-Col. 3, Ln. 5). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of Ellis and Haddad in order to provide a system which allows a user wider download flexibility.

Claim 63 corresponds to Claim 27. Thus, it is analyzed and rejected as previously discussed.

As to Claim 32, Haddad further teaches that product prices vary according to the delivery method. (citations of Claim 27). Thus, the Examiner interprets this as meaning the faster the download time, the more expensive. Therefore, if a user requests an immediate download, he or she will pay a premium price. Accordingly, the combined systems of Ellis and Haddad render obvious all limitations of Claim 32.

Claim 68 corresponds to Claim 32. Thus, it is analyzed and rejected as previously discussed.

As to Claim 33, Haddad further teaches that prices will vary (i.e., updating) depending upon the download time. (Col. 3, Ln. 1-5). Accordingly, the combined systems of Ellis and Haddad render obvious all limitations of Claim 33.

Claim 69 corresponds to Claim 33. Thus, it is analyzed and rejected as previously discussed.

V. Claims 35 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al in view of Hooper et al. (US Pat. No. 5,414,455).

As to Claim 35, Ellis fails to disclose the recited limitations. However, within the same field of endeavor, Hooper et al disclose a similar system which allows the user to download media at a faster than real-time playback rate. (Col. 2, Ln. 41-48). Moreover, the Examiner takes Official Notice that, at the time of Applicant's invention, the use of portable medium drives was notoriously well known in telecommunications. (as evidenced by *Hassell et al*, US Pat. Pub. No. 2004/0128685). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of Ellis and Hooper in order to provide faster acquisition of programming.

Claim 71 corresponds to Claim 35. Thus, it is analyzed and rejected as previously discussed.

VI. Claims 36 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al in view of Greenwood et al. (US Pat. No. 5,568,181).

As to Claim 36, Ellis fails to disclose the recited limitations. However, within the same field of endeavor, Greenwood et al disclose a similar system which allows the user to download media at a slower than real-time playback rate. (Col. 3, Ln. 5-6 & Col. 8, Ln. 20-23). Moreover, the Examiner takes Official Notice that, at the time of Applicant's invention, the use of portable medium drives was notoriously well known in telecommunications. (as evidenced by *Hassell et al*, US Pat. Pub. No. 2004/0128685). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of Ellis and Greenwood in order to provide a more bandwidth efficient system.

Claim 72 corresponds to Claim 36. Thus, it is analyzed and rejected as previously discussed.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jade O. Laye whose telephone number is (571) 272-7303. The examiner can normally be reached on Mon. 7:30am-4, Tues. 7:30-2, W-Fri. 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner: Jade O. Laye

Initials: 

March 27, 2006.



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